

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Kipp * Flores Architects, LLC

(b) County of Residence of First Listed Plaintiff Travis

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Patrick Zummo, Attorney, 3900 Essex Lane, Suite 800, Houston, Texas 77027, (713) 651-0590

DEFENDANTS

Hallmark Design Homes, L.P., Hallmark Collection of Homes, LLC and Joe B. Partain

County of Residence of First Listed Defendant Fort Bend

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. Section 101 et seq.Brief description of cause:
Infringement of copyrights**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

March 24, 2009

SIGNATURE OF ATTORNEY OF RECORD

Patrick Zummo

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KIPP ☆ FLORES ARCHITECTS, LLC,

Plaintiff,

VS.

HALLMARK DESIGN HOMES, L.P.,
HALLMARK COLLECTION OF HOMES, LLC,
AND JOE B. PARTAIN,

Defendants.

§ § § § § § § § § §

Civil Action No. _____

JURY DEMANDED

ORIGINAL COMPLAINT

Kipp ☆ Flores Architects, LLC (“KFA”), plaintiff, files this Complaint against Hallmark Design Homes, L.P., Hallmark Collection of Homes, LLC, and Joe B. Partain and for its cause of action would respectfully show the Court and Jury the following:

Parties

1. KFA is a Texas limited liability company with its principal place of business in Austin, Texas.
2. Defendant Hallmark Design Homes, L.P., (“Hallmark Design”), is a Texas limited partnership with its principal place of business in Sugar Land, Texas. Hallmark Design may be served through its registered agent, Joe B. Partain, 12946 Dairy Ashford Road, Suite 320, Sugar Land, Texas 77478.
3. Defendant Hallmark Collection of Homes, LLC (“Hallmark Collection”), is a Texas limited liability company. It was formerly known as “Hallmark Design Homes LLC.” Hallmark

Collection is the general partner of Hallmark Design. Hallmark Collection may be served through its registered agent, Joe B. Partain, 12946 Dairy Ashford Road, Suite 320, Sugar Land, Texas 77478.

4. Defendant Joe B. Partain (“Partain”), is an individual who resides in Richmond, Texas and who does business in Sugar Land, Texas. Partain may be served at his business address, 12946 Dairy Ashford Road, Suite 320, Sugar Land, Texas 77478.

Jurisdiction and Venue

5 This Court has subject matter jurisdiction of this case under 28 U.S.C . § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 et seq.

6 Venue is proper in this District under 28 U.S.C. § 1400(a) because defendants may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District; and defendants reside and do business in this District.

Factual Background

7 KFA, is an architectural firm which creates and markets architectural designs. KFA owns copyrights protecting the architectural works it has created.

8 KFA is the author and the owner of all copyrights in the following technical drawings and architectural works:

Sketch 2212	Sketch 2304
Sketch 2821	Sketch 1836
Sketch 2133	Sketch 1940
Sketch 2472	Sketch 2345
Sketch 2631	Sketch 1861
Sketch 2493A	Sketch 2371
Sketch 2637A	Sketch 2860
Sketch 2188A	
Sketch 2124	

Sketch 3523
 Sketch 3511
 Sketch 4427
 Sketch 4012
 Sketch 2343

(Hereinafter, the foregoing works will be referred to collectively as the “Copyrighted Works.”)

9 Each of the Copyrighted Works constitutes original material that is copyrightable under federal law.

10. The following Copyrighted Works have been registered with the United States Copyright Office :

<u>Plan</u>	<u>Registration Number</u>	<u>Date</u>
Sketch 2212	VA1-281-913	1991
Sketch 2821	VAu 534-488	2001
Sketch 2133	VAu 583-442	2003
Sketch 2472	VAu 526-921	2001
Sketch 2631	VAu 519-331	2001
Sketch 2493A	VAu 629-002	2004
Sketch 2637A	VAu 534-488	2001
Sketch 2188A	VAu 629-008	2004
Sketch 2124	VAu 526-912	2001
Sketch 3523	VAu 634-744	2004
Sketch 3511	VAu 636-881	2004
Sketch 4427	VAu 634-734	2004
Sketch 4012	VAu 634-738	2004
Sketch 2343	VAu 526-921	2001

11. As to the remaining Copyrighted Works, KFA has applied for registration with the United States Copyright Office. The dates KFA applied for registration, and the Copyright Office Case Numbers, are set out below:

<u>Plan</u>	<u>Case Number</u>	<u>Date of Application</u>
Sketch 2304	1-138934997	12/03/08
Sketch 1836	1-138934768	12/03/08
Sketch 1940	1-138934581	12/03/08
Sketch 2345	1-138935072	12/03/08
Sketch 1861	1-99553682	10/09/08
Sketch 2371	1-138934684	12/03/08
Sketch 2860	1-138934924	12/03/08

For each such work where KFA does not yet possess a registration certificate, KFA (1) has paid the requisite fees to the Copyright Office; (2) has deposited copies of the work with the Copyright Office, and (3) has sent the registration application to the Copyright Office, and the Copyright Office has received it.

12. Defendants obtained copies of KFA's Copyrighted Works. Defendants have infringed KFA's copyrights in the Copyrighted Works. Defendants have committed numerous acts of infringement, including the following:

- a. Defendants have made copies and/or derivatives of KFA's Copyrighted Works by making paper and digital drawings and plans based on KFA's Copyrighted Works..
- b. Defendants have made copies and/or derivatives of KFA's Copyrighted Works by constructing structures based on KFA's Copyrighted Works.
- c. Defendants have sold and have offered for sale structures based on KFA's Copyrighted Works that are copies and/or derivatives of KFA's Copyrighted

Works.

13. All copies of KFA's Copyrighted Works obtained by defendants contained copyright management information, in the form of notices identifying the works, identifying KFA as the author of the works, identifying KFA as the owner of copyrights in the works, and specifying terms and conditions for use of the works.

14. In the course of their creation of infringing copies and/or derivatives of KFA's copyrighted works, defendants removed and/or altered KFA's copyright management information without authority of KFA.

15. Defendants have created, published and used non-pictorial depictions of structures based on KFA's Copyrighted Works in promotional and advertising materials. Defendants have published and used these infringing materials in the course of advertising their infringing structures. Furthermore, defendants have used the structures themselves to advertise their infringing structures. These infringing advertising activities have resulted in the sales of infringing structures described above. Furthermore, these infringing advertising activities, and the resulting infringing sales, are and have been a substantial factor in the value of any infringing structures that defendants have not yet sold, and the prices that buyers would be willing to pay for such structures. .

16. In November 2008, KFA demanded that defendants cease and desist from further acts of copyright infringement. Defendants have refused, and continue to violate KFA's copyrights by continuing their infringing activities. KFA therefore brings this action to protect its rights under federal law.

Cause of Action

Copyright Infringement

17. KFA complains of defendants for copyright infringement, and incorporates paragraphs 1-16 above by reference.

18. The creation of the structures and associated design and construction drawings based on KFA's Copyrighted Works by defendants has infringed and continues to infringe KFA's copyrights in the Copyrighted Works.

19. The acts of defendants in the creation and publication of non-pictorial representations based on KFA's Copyrighted Works have infringed and are infringing KFA's copyrights in the Copyrighted Works.

20. Alternatively, Hallmark Collection and Partain have or have had a direct financial interest in the creation, use and/or publication of the structures and/or the associated design and construction drawings, and/or the non-pictorial representations based on KFA's Copyrighted Works, and had the power or the ability to supervise and control the creation, use and/or publication of the structures and/or the associated design and construction drawings, and/or the non-pictorial representations based on KFA's Copyrighted Works.

21. Defendants are each jointly and severally liable for KFA's actual damages, including all of KFA's lost profits.

22. Defendants are each jointly and severally liable to KFA for all of their profits attributable to the infringements.

23. In the alternative to the actual damages and profits sought above, KFA is entitled to an award of statutory damages for all infringements of KFA's Copyrighted Works, as permitted by 17 U.S.C. § 504(c).

24. Defendants are each jointly and severally liable for KFA's costs and reasonable attorneys fees incurred in this action.

25. In addition, KFA is entitled to preliminary and permanent injunctions pursuant to 17 U.S.C. § 502 prohibiting defendants from further infringement of KFA's copyrights, including but not limited to the further use of infringing plans, creation or use of derivative plans, and construction, sale or rental of infringing structures.

26. Furthermore, this Court should issue an order pursuant to 17. U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works, in possession of defendants or their agents or contractors that infringe KFA's copyrights during the pendency of this lawsuit; and (b) upon final hearing of this case, to destroy or otherwise dispose of those copies.

Conditions Precedent

27. With respect to all counts, KFA generally avers that all conditions precedent to its rights of recovery have occurred or been performed, or have been waived or excused by defendants.

Jury Demand

28. Pursuant to Federal Rule of Civil Procedure 38, KFA respectfully demands trial by jury of all issues so triable.

WHEREFORE, PREMISES CONSIDERED, Kipp ☆ Flores Architects, LLC, prays that defendants be cited to appear and answer; and that upon final trial it have and recover from

defendants as set forth above, that it have permanent injunctive relief against defendants as requested herein, and that it have such and other relief as it may show itself to be entitled.

Respectfully submitted,

/s/ Patrick Zummo

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